

SCHOONER NANCY.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS
TRANSMITTING A COPY OF THE CONCLUSIONS OF LAW AND OF
FACT IN THE FRENCH SPOILIATION CASES RELATING TO THE
VESSEL SCHOONER NANCY, THOMAS HADAWAY, MASTER.

FEBRUARY 15, 1904.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS,
Washington, D. C., February 12, 1904.

SIR: Pursuant to the order of the Court of Claims, I transmit herewith the conclusions of fact and of law filed under the act of January 20, 1885, in the French spoliation claims set out in the annexed findings by the court relating to the vessel schooner *Nancy*, Thomas Hadaway, master.

I am, very respectfully, yours, etc.,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. JOSEPH G. CANNON,
Speaker House of Representatives.

[Court of Claims. French spoiliations. Act of January 20, 1885; 23 Stat. L., 283. Schooner *Nancy*, Thomas Hadaway, master.]

No. of case.	Claimant.
1601.	Francis M. Boutwell, administrator of Mungo Mackay, <i>v. The United States.</i>
1861.	Charles F. Adams, administrator of Peter C. Brooks, <i>v. The United States.</i>
	A. Lawrence Lowell, administrator of Nathaniel Fellowes, <i>v. The United States.</i>
	William Vernon, administrator of Samuel Brown, <i>v. The United States.</i>
	Henry Parkman, administrator of John Duballet, <i>v. The United States.</i>
	Francis M. Boutwell, administrator of Benjamin Cobb, <i>v. The United States.</i>
3586.	Charles T. Lovering, administrator of Joseph Taylor, <i>v. The United States.</i>
	Charles A. Welch, administrator of William Stackpole, <i>v. The United States.</i>
	William G. Perry, executor of Nicholas Gilman, <i>v. The United States.</i>
	Augustus P. Loring, administrator of William H. Boardman, <i>v. The United States.</i>
	H. Burr Crandall, administrator of Thomas Cushing, <i>v. The United States.</i>
	Lawrence Bond, administrator of Nathan Bond, <i>v. The United States.</i>
3587.	Charles T. Lovering, administrator of Joseph Taylor, <i>v. The United States.</i>
	Thomas Cushing, administrator of Marston Watson, <i>v. The United States.</i>
3588.	Charles T. Lovering, administrator of Joseph Taylor, <i>v. The United States.</i>
	H. H. Hunnewell, administrator of Arnold Welles, Jr., <i>v. The United States.</i>
	Charles K. Cobb, administrator of John Codman, <i>v. The United States.</i>
	Frank Dabney, administrator of Samuel W. Pomeroy, <i>v. The United States.</i>
3186.	Charles F. Adams, administrator of Peter C. Brooks, <i>v. The United States.</i>

PRELIMINARY STATEMENT.

These cases were tried before the Court of Claims on the 18th day of March, 1902. The claimants were represented by George S. Boutwell, William T. S. Curtis, and Theodore J. Pickett, and the United States, defendants, by the Attorney-General, through his assistants in the Department of Justice, Charles W. Russell and John W. Trainer, with whom was Assistant Attorney-General Louis A. Pradt.

CONCLUSIONS OF FACT.

The court, upon the evidence and after hearing the arguments and considering same with the briefs of counsel on each side, determine the facts to be as follows:

I. The schooner *Nancy*, Thomas Hadaway, sailed on a commercial voyage on or about the month of March, 1798, bound from Surinam to Boston. While peacefully pursuing said voyage she was seized on the high seas by the French privateer *La Providence* on or about the 1st day of April, 1798, and carried into the island of Guadeloupe, where both vessel and cargo were condemned and sold by the French prize tribunal sitting in said island and became a total loss to the owner.

The grounds of condemnation as set forth in the decree are as follows.

"Considering that nothing furnishes better proof of the feigned destination of the said vessel than the vague expressions used in the different papers, such as West Indies and a market; that the instructions of the owner to the captain give him the privilege of touching at the port of Demerara or Martinique.

"Considering that the examination of the crew of this prize shows contradictory statements; that the bills of lading from Surinam have no signature but that of the captain; that the owner is a native of Scotland and has exhibited no proofs of his naturalization.

"It is understood by the tribunal that the register of the vessel should state either the American birth of the owner of the vessel or his naturalization, but in this case neither one or the other is mentioned."

The tribunal applying Article II of the French regulation of October 21, 1744, and Article I of the instructions of the Particular Agents of the Executive Directory of the 25th of Brumaire, and article 4 of the decree of said agents of the 13th Pluviose, year 5, declared the vessel, her rigging, apparel, and cargo a good prize, and same was sold for the benefit of the captors.

II. The schooner *Nancy* was a duly registered vessel of the United States, of 120½ tons burthen, built at New Bedford in the year 1794, and registered at Boston, and was owned by Mungo Mackay, a citizen of the United States.

III. The cargo of the *Nancy* at the time of her capture upon the homeward voyage was the property of the owner of the vessel, Mungo Mackay, and was worth at least the sum of \$11,400, the amount it was insured for and which amount the insurers paid after proof of the loss as aforesaid.

IV. The losses by reason of the condemnation of the *Nancy* were as follows:

Value of the vessel	\$4,200
Value of the freight earnings	2,000
Value of the cargo	11,400
Premiums of insurance paid	588

Amounting in all to 18,188

V. Case No. 1861. The said Mungo Mackay insured his interests in the vessel and cargo in the office of Peter C. Brooks, in the sum of \$9,000, at a premium cost of 12 per cent, by a policy dated December 22, 1797, \$6,500 of said policy being on the cargo and \$2,500 on the vessel.

Said policy was underwritten by the following persons, citizens of the United States, in the sums set opposite their names, viz:

David Greene	\$1,000
Nathaniel Fellowes	1,500
Samuel Brown	1,500
Benjamin Bussey	500
Stephen Gorham	500
Daniel Sargent	500
Benjamin Homer	500
Crowell Hatch	1,000
Benjamin Cobb	500
John Duballet	500
Caleb Hopkins	1,000

And subsequently, by reason of the premises, the said Peter C. Brooks, as agent, paid to the assured the said sum of \$9,000 as and for a total loss on said policy.

It does not appear that said premium amounting to \$1,080 was ever paid by said Mackay.

Case No. 3186. That one Samuel Bradlee, jr., on or about July 5, 1798, effected insurance in the office of Peter C. Brooks in the sum of \$140, by a policy on an alleged venture on board, which said policy was underwritten by Tuthill Hubbard, a citizen of the United States, but there is no competent proof of ownership of the property by the party insured, and it is abandoned by the claimant.

Case No. 3586. The said Mungo Mackay effected a further insurance on the 2d day of January, 1798, on his interests in the cargo, in the office of Joseph Taylor in the sum of \$2,500, at a premium cost of 12 per cent, which said policy was underwritten by the following persons, citizens of the United States, in the sums set opposite their names, viz:

William Stackpole	\$500
W. H. Boardman	400
Nathan Bond	400
Nicholas Gilman	1,000
Thomas Cushing	200

Case No. 3587. The said Mungo Mackay effected a further insurance on the 2d day of January, 1798, on his interests in the cargo, in the office of Joseph Taylor in the sum of \$1,000, at a premium cost of 12 per cent, which said policy was underwritten by the following party, a citizen of the United States, viz:

Marston Watson	\$1,000
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Case No. 3588. The said Mungo Mackay effected a further insurance on the 2d day of January, 1798, on his interest in the cargo, in the office of Joseph Taylor in the sum of \$1,400, at a premium cost of 12 per cent, which said policy was underwritten by the following parties, citizens of the United States, in the sums set opposite their names, viz:

Arnold Welles	\$400
John Codman	500
Samuel W. Pomeroy	500

That subsequently, by reason of the premises, the said Joseph Taylor, as agent, paid to the said Mungo Mackay as and for a total loss, the sum of \$4,900, being the aggregate amount of the said three policies so underwritten in his office.

December 23, 1801, David Greene, in consideration of \$6,000, to him paid by Peter C. Brooks, and the assumption by the said Brooks of all and any liabilities and disadvantages arising from his underwriting in the office of the said Brooks, assigned to the said Brooks all his right, title, and interest in and to all insurance done by him as an underwriter in the office of the said Brooks.

February 15, 1805, Benjamin Bussey, in consideration of \$10,000, to him paid by Peter C. Brooks, and the assumption by the said Brooks of all and any liabilities and disadvantages arising from his underwriting in the office of said Brooks, assigned to the said Brooks all his right, title, and interest in and to all insurance done by him as an underwriter in the office of the said Brooks.

November 21, 1801, Stephen Gorham, in consideration of \$2,986.65 to him paid by Peter C. Brooks and the assumption by the said Brooks of all and any liabilities and disadvantages arising from his underwriting in the office of the said Brooks, assigned to the said Brooks all his right, title, and interest in and to all insurance done by him as an underwriter in the office of the said Brooks.

September 2, 1805, Daniel Sargeant, in consideration of \$3,000 to him paid by Peter C. Brooks and the assumption by the said Brooks of all and any liabilities and disadvantages arising from his underwriting in the office of the said Brooks, assigned to the said Brooks all his right, title, and interest in and to all insurance done by him as an underwriter in the office of the said Brooks.

July 23, 1805, Benjamin Homer, in consideration of \$5,000 to him paid by Peter C. Brooks, and the assumption by the said Brooks of all and any liabilities and disadvantages arising from his underwriting in the office of the said Brooks, assigned to the said Brooks all his right, title, and interest in and to all insurance done by him as an underwriter in the office of the said Brooks.

December 23, 1801, Caleb Hopkins, in consideration of \$3,000 to him paid by Peter C. Brooks and the assumption by the said Brooks of all and any liabilities and disadvantages arising from his underwriting in the office of the said Brooks, assigned to the said Brooks all his right, title, and interest in and to all insurance done by him as an underwriter in the office of the said Brooks.

Case No. 1601. The loss to the owner, Mungo Mackay, was as follows.

Value of the vessel	\$4, 200
Value of freight earnings	2, 000
Value of cargo	11, 400
Insurance premium paid	588

Making a total loss of	18, 188
Amount of insurance paid Mungo Mackay	13, 900

Making a total loss to Mungo Mackay	4, 288
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VI. The claimants have produced letters of administration on the various estates represented by them, and have proved to the satisfaction of the court that the persons whose estates they represent are the same persons who suffered loss through the capture of the *Nancy*.

The claimants in their representative capacity are the owners of said claims, which have never been assigned except as aforesaid.

Said claims were not embraced in the convention between the United States and the Republic of France concluded on the 30th of April, 1803. They were not claims growing out of the acts of France allowed and paid in whole or in part under the provisions of the treaty between the United States and Spain, concluded on the 22d day of February, 1819, and were not allowed in whole or in part under the provisions of the treaty between the United States and France of the 4th of July, 1831.

CONCLUSIONS OF LAW.

The court decides, as conclusions of law, that said seizure and condemnation were illegal, and the owners and insurers had valid claims of indemnity therefor upon the French Government prior to the ratification of the convention between the United States and the French Republic, concluded on the 30th day of September, 1800; that said claims were relinquished to France by the Government of the United States by said treaty in part consideration of the relinquishment of certain national claims of France against the United States, and that the claimants are entitled to the following sums from the United States:

Francis M. Boutwell, administrator of Mungo Mackay, four thousand two hundred and eighty-eight dollars.....	\$4, 288
Charles Francis Adams, administrator of Peter C. Brooks, four thousand dollars.....	4, 000
A. Lawrence Lowell, administrator of Nathaniel Fellowes, one thousand five hundred dollars.....	1, 500
William Vernon, administrator of Samuel Brown, one thousand five hundred dollars.....	1, 500
Henry Parkman, administrator of John Duballet, five hundred dollars.....	500
Francis M. Boutwell, administrator of Benjamin Cobb, five hundred dollars.....	500
Charles A. Welch, administrator of William Stackpole, five hundred dollars.....	500
Wm. G. Perry, executor of Nicholas Gilman, one thousand dollars.....	1, 000
Augustus P. Loring, administrator of William H. Boardman, four hundred dollars.....	400
H. Burr Crandall, administrator of Thomas Cushing, two hundred dollars..	200
Lawrence Bond, administrator of Nathan Bond, four hundred dollars.....	400
Thomas Cushing, administrator of Marston Watson, one thousand dollars...	1, 000
H. H. Hunnewell, administrator of Arnold Welles, jr., four hundred dollars	400
Charles K. Cobb, administrator of John Codman, five hundred dollars.....	500
Frank Dabney, administrator of Samuel W. Pomeroy, five hundred dollars..	500
George G. King, administrator of Crowell Hatch, one thousand dollars.....	1, 000

Total, eighteen thousand one hundred and eighty-eight dollars.....	18, 188
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BY THE COURT.

Filed, January 11, 1904.

A true copy.

Test this 12th day of February, 1904.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.